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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**FRANK J. SHELTON, ET AL.,**

Plaintiffs,

vs.

**AIR & LIQUID SYSTEMS CORPORATION, ET AL.,**

Defendants.

Case No.: 4:21-cv-04772-YGR

**ORDER GRANTING MOTION TO DISMISS**

Re: Dkt. No.82

Plaintiffs Frank J. Shelton, Jr., and Jennifer Schuyler bring this amended complaint against defendants Air & Liquid Systems Corporation; Alfa Laval, Inc.; Armstrong International, Inc.; BW/IP, Inc.; Carrier Corporation; Caterpillar Inc.; CLA-VAL Co.; Cleaver-Brooks, Inc.; Copes-Vulcan, Inc.; Crane Co.; Crane Environmental, Inc.; Dezurik, Inc.; Electrolux Home Products, Inc.; Flowserve US Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash LLC; General Electric Company; The Goodyear Tire & Rubber Company; Grinnell LLC, Hopeman Brothers, Inc.; IMO Industries, Inc.; ITT LLC; John Crane, Inc.; Johnson Controls, Inc.; M. Slaven and Associates, Inc.; Metropolitan Life Insurance Company; SPX Corporation; Superior-Lidgerwood-Mundy Corporation; Taco, Inc.; Velan Valve Corp.; Viacomcbs, Inc.; VIAD Corp.; Warren Pumps, LLC; Weir Valves & Controls USA, Inc.; and The William Powell Company alleging that Shelton was exposed to asbestos during the course of his time with the United States Navy. Plaintiffs assert six causes of action: (1) negligence; (2) breach of implied warranty; (3) strict liability; (4) fraud and concealment; (5) conspiracy to defraud and failure to warn; and (6) loss of consortium. (See Dkt. No. 1-1) (“Complaint” or “Compl.”)

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1 Now before the Court is defendant Superior Lidgerwood Mundy Corporation's ("SLM")  
2 motion to dismiss pursuant to Federal Rules of Civil Procedure Rule 12(b)(2). (See Dkt. No. 82.)

3 Having carefully considered the papers submitted and the pleadings in this action, and for the  
4 reasons set forth below, the Court **GRANTS** the motion to dismiss **WITH LEAVE TO AMEND**.

5 **I. BACKGROUND**

6 The complaint alleges the following:

7 Shelton served in the Navy from approximately the mid-1960s to the early 1970s. (Compl. ¶  
8 5.) During his time with the Navy, Shelton worked as a Machinist Mate while stationed aboard the  
9 USS Constellation, USS Repose, and USS Haleakala, where he regularly and routinely performed  
10 maintenance and repairs to various equipment in the machinery spaces to which he was assigned.  
11 (*Id.*) Shelton was tasked with disturbing, sanding, scraping, cutting and abrading asbestos-containing  
12 components of the equipment. (*Id.*) As a result, Shelton was exposed to asbestos-containing products  
13 and developed malignant mesothelioma as a result of the exposure. (*Id.* ¶ 6.)

14 **II. LEGAL STANDARD**

15 A motion brought under Federal Rule of Civil Procedure 12(b)(2) challenges a court's exercise  
16 of personal jurisdiction over a defendant. Fed. R. Civ. P. 12(b)(2). Where no federal statute governs  
17 personal jurisdiction, the Court applies the law of the state in which it sits. *Schwarzenegger v. Fred*  
18 *Martin Motor, Co.*, 374 F.3d 797, 800 (9th Cir. 2004). California law allows for the exercise of  
19 "jurisdiction on any basis not inconsistent with the Constitution of [California] or of the United  
20 States." Cal. Civ. Proc. Code § 410.10. As such, for a court to exercise personal jurisdiction over a  
21 non-resident defendant, that defendant must have "minimum contacts with [the forum state] such that  
22 the maintenance of the suit does not offend traditional notions of fair play and substantial  
23 justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and  
24 citation omitted). "In judging minimum contacts, a court properly focuses on 'the relationship among  
25 the defendant, the forum, and the litigation.'" *Calder v. Jones*, 465 U.S. 783, 788  
26 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). Personal jurisdiction may be either  
27 general or specific. *See Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014.).

28 General jurisdiction allows a court to assert jurisdiction over an individual to hear all claims

1 pertaining to the defendant. *Id.* at 137. General jurisdiction only attaches in the state where the  
 2 defendant is domiciled. *Id.* By contrast, specific jurisdiction allows a court to hear claims arising out  
 3 of, or related to, defendant's contacts with the forum. *Goodyear Dunlop Tires Operations, S.A. v.*  
 4 *Brown*, 564 U.S. 915, 919 (2011). The Ninth Circuit applies a three-prong test to determine whether a  
 5 non-resident defendant's activities are sufficiently related to the forum state to establish specific  
 6 jurisdiction:

7

- 8       (1) The non-resident defendant must purposefully direct his activities or consummate  
       some transaction with the forum or resident thereof; or perform some act by which  
       he purposefully avails himself of the privilege of conducting activities in the  
       forum, thereby invoking the benefits and protections of its laws;
- 9       (2) the claim must be one which arises out of or relates to the defendant's forum-  
       related activities; and
- 10       (3) the exercise of jurisdiction must comport with fair play and substantial  
       justice, *i.e.* it must be reasonable.

11

12       *Schwarzenegger*, 374 F.3d at 802 (citing *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)). With  
 13 respect to the first part of this test, "purposeful direction" and "purposeful availment" are two distinct  
 14 concepts: courts generally use a purposeful direction analysis in cases sounding in tort but a  
 15 purposeful availment analysis in cases sounding in contract. *Glob. Commodities Trading Grp., Inc. v.*  
 16 *Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020). Purposeful direction  
 17 questions are analyzed using the "effects" test established in *Calder v. Jones*, 465 U.S. 783. The  
 18 "effects" test asks whether defendant "(1) committed an intentional act, (2) expressly aimed at the  
 19 forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Id.*  
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21       **III. ANALYSIS**

22

23       Plaintiffs aver that SLM's act of placing its pumps in the stream of commerce, without more,  
 24 is enough to warrant personal jurisdiction. In the Ninth Circuit, the sale of a product to a state  
 25 resident alone is insufficient to establish personal jurisdiction. In *Holland Am. Line, Inc. v. Wartsila*  
 26 *N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007), the Ninth Circuit noted, citing *See Asahi Metal Indus.*  
 27 *Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987), that:

28       [t]he placement of a product into the stream of commerce, without more,  
       is not an act purposefully directed toward a forum state. Even a

1 defendant's awareness that the stream of commerce may or will sweep  
2 the product into the forum state does not convert the mere act of placing  
3 the product into the stream of commerce into an act  
4 purposefully directed toward the forum state.

5 ....

6 Nor do the allegations against Wartsila Finland support a theory of  
7 purposeful availment. Asahi requires "something more" than the mere  
8 placement of a product into a stream of commerce, and Holland America  
9 has failed to demonstrate the requisite extra showing here.

10 Here, the complaint allegations in support of specific jurisdiction are basic. It alleges that SLM as  
11 well as some of the other defendants:

12 were or are corporations organized and existing under and by virtue of  
13 the laws of the State of California, or the laws of some other state or  
14 foreign jurisdiction...and each of them, were and are authorized to do  
15 and are doing business in the State of California, that said defendants  
16 have regularly conducted business in the County of Alameda, State of  
17 California, and that certain of said defendants presently designate and  
18 have at pertinent times have designated the County of Alameda as their  
19 principal place of doing business within the State of California.

20 (Compl. ¶ 53.)

21 SLM submitted a declaration from its Vice President and Chief Financial Officer disputing all  
22 of plaintiffs' allegations pertaining to personal jurisdiction. *See* Declaration of Arthur Woodman  
23 ("Woodman Decl.") In essence, SLM's declaration states that: SLM is not headquartered in  
24 California, nor does SLM have its principal place of business in California; SLM has never  
25 manufactured its products in California; SLM has never sold its pumps in California on a retail or  
26 commercial basis; SLM's manufacturing facilities are located solely in Wisconsin; SLM is not  
27 licensed to do business in California, and does not have an agent for service of process in California;  
28 SLM does not own any real estate in California, and does not have any employees, agents, or bank  
accounts in the state of California; and that SLM sold and shipped a total of 213 pumps to California  
in various years between 1978 and 1986 and then a winch in 2011 and 2017. (*Id.* ¶¶ 2-10.) Thus,  
according to SLM, the only connection it has with California is its sell of 213 ship pumps to a United  
States Navy Contract and one winch to Los Angeles, County. *Id.* ¶ 10.

1 Plaintiffs argue that these business transactions are enough to warrant personal jurisdiction  
2 over SLM. The Court disagrees. In opposing the motion to dismiss, plaintiffs do not provide  
3 evidence to refute any of the facts SLM alleges in its declaration. Plaintiffs have not sufficiently  
4 alleged that SLM purposefully directed its activities at California. Further, plaintiffs have not alleged  
5 facts sufficient to show that SLM's shipment of the pumps and winch to a United States Navy  
6 Contractor and Los Angeles County are sufficient contacts with the forum. For instance, there are no  
7 allegations pertaining to whether SLM engaged in any additional acts such as advertising in the  
8 forum, designing of the product for the market in the forum, or the use of a sales agent in the forum to  
9 help distribute and sell the product. *See Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S.  
10 102, 112 (1987).

11 Without more, the Court finds that plaintiffs have failed to make a *prima showing*, either  
12 through pleading facts, or through evidence, that SLM has sufficient contacts with California.  
13 Accordingly, the Court **GRANTS** SLM's motion to dismiss with **LEAVE TO AMEND**.

14 Plaintiff's request for jurisdictional discovery is granted. If appropriate, plaintiff shall file an  
15 amended complaint by January 10, 2022. Defendant shall respond within twenty-one (21) days  
16 thereafter.

17 **IT IS SO ORDERED.**

18 Dated: September 15, 2021

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YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE